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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/040,942	BORDERS ET AL.	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 April 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-36 and 62* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13,17-36 and 62* is/are rejected.

7)☒ Claim(s) *14-16* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Applicant's election with traverse of Group I claims 1-36 and 62 in the reply filed on 4/23/2004 is acknowledged. The traversal is on the ground(s) that the search for one group requires also a search of the other group to be properly searched. This is not found persuasive because the two processes have different parameters that the search for one does not require the search for the other. While the two processes have the blanching step; such step is carried out differently in the two processes. The same is true with the dehydrating step. The process of Invention II requires a tempering step and the addition of calcium chloride and sugar, glycerine or sorbitol to the cooking water which makes the cooking step different from the cooking step of Group I.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Sterner et al.

Sterner et al disclose a reconstitutable legume product. The product is reconstituted simply by adding hot or cold water. (see col. 6 lines 25-39)

Sterner et al. disclose the product of claim 28. They also disclose the process of forming food product by adding hot or cold water to the reconstitutable product as claimed in claims 29-30. The product of Sterner et al differs from the claimed product in the way by which it is made. However, determination of product-by-process claims is

based on the product itself, even though such claims are limited and defined by product. (see In re Thorpe 227 USPQ 964)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-13,17-23,27,31 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keely.

Keely disclose a continuous process for preparing legumes. The process comprises the steps o passing raw legumes such as navy beans to a water-soaking apparatus to blanch the legumes, passing the blanched legumes to a cooking unit to cook the legumes, cooling the cooked legumes and reducing them to atmospheric pressure and drying the legumes. The process is carried out continuously. The water-soaking apparatus is a blancher having a spiral pipeline; the legumes are pumped through the spirally formed pipeline. The legumes are hydrated in the blancher for 20-25 minutes at a temperature of 180-190 degree F. The cooking unit is pressurized

cooking apparatus. Upon leaving the cooking unit, the legume slurry passes through a tube into a cooler and is cooked by the addition of cold water. Upon leaving the cooling and depressurizing stage, the pressure to which the slurry is subjected is reduced to atmospheric. The cooling apparatus is a closed loop system. (see columns 1-4)

With respect to claim 1, the pressurized cooking unit is equivalent to the continuous advanced flight pressure because the legumes are passed through pressurized pipe, the cooling and depressurizing are equivalent to the decompressing step as the specification discloses the decompressing is depressurizing the legumes through a water column. Keely does not disclose a hydrostatic loop. Keely does not disclose the apparatus as in claim 2, the conditioning steps as recited in claims 5-6, the conditioning is a chilled conditioning as in claims 7-8, the conditioning time as in claim 9, the pressure and temperature as in claims 11-12 and the dehydrating step as claimed in claims 7,19-23.

It would have been obvious to one skilled in the art to use any type of blanching and cooling apparatus as long as the required blanching and cooling can be carried out. Applicant has not shown anything unexpected or critical in using a rotary drum blancher and a hydrostatic loop. The time of hydrating and the temperature at which it is done can vary depending on the type of legumes and the degree of softening desired before cooking. It would have been within the skill of one in the art to determine the appropriate time and temperature through routine experimentation. In absence of showing of unexpected result or criticality, it would have been obvious to hydrate the legumes in one or two steps as long as the desired soaking obtained. The cooking time

and temperature can vary depending on the type of bean and degree of cooking. It would have been obvious to use higher temperature for a shorter period of time and vice versa. The use of pressure allows for the use of higher temperature; it would have within the skill of one in the art to determine the proper pressure. Applicant has not shown anything unexpected with the claimed pressure. It would have been obvious to dry the product in one long drying step or to divide the drying into multiple steps as long as the product is properly dehydrated. The time, temperature and relative humidity at which the drying is done can be determined through routine experimentation with different conditions to obtain the most optimum drying in the most efficient way.

Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keely in view of Sterner et al.

Keely does not teach passing the legumes through a set of rollers for flaking before dehydration.

Sterner et al teach a method for preparing dehydrated legumes in which the legumes are passed to a set of rollers for flaking before dehydrating. (see col. 5 lines 25-40)

It would have been obvious to one skilled in the art to pass the legume to a set of rollers for flaking as taught by Sterner et al when one does not want a whole legume product and a flattened legume is wanted or when one wants rapid dehydration and reconstitution as taught by Sterner et al. The gap between the rollers can vary depending on the thickness wanted for the legume product.

Claims 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keely in view of Kawamura.

Keely does not disclose adding an organic acid at the conditioning step or the cooking step.

Kawamura disclose a process of preparing a dehydrating foods including legume product. Kawamura teaches to immerse the food in solution containing acid to preserve the fresh color of the product. (see col. 1 lines 60-65)

It would have been obvious to add an acid to the water in the conditioning step or the cooking step to obtain the effect taught by Kawamura. The type of acid and the amount to use can be determined by one skilled in the art without undue experimentation.

Claims 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. There is no suggestion to do the decompressing step at the temperature and time claimed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Margolis discloses a methof of making reconstitutable dehydrated food product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 25, 2004

Lien Tran

LIEN TRAN
PRIMARY EXAMINER

Group 1707